

REQUEST FOR QUALIFICATIONS
ISSUED BY
THE CITY OF EL PASO
FINANCIAL SERVICES / PURCHASING DIVISION

SOLICITATION NO: 2013-135R

DATE ISSUED: JUNE 4, 2013

**TITLE: ENVIRONMENTAL LABORATORY SERVICES FOR AIR QUALITY
ENVIRONMENTAL SERVICES**

An original, signed, sealed, OFFER to furnish the goods and/or services set forth below will be received at the place indicated below, until:
2:00 PM, local time, WEDNESDAY, JUNE 19, 2013

NOTICE When used in Request for Proposals, the terms 'Offer' and 'Proposal' and 'Offeror' and 'Vendor' are interchangeable.

ADDRESS OFFERS TO:
PURCHASING MANAGER
FINANCIAL SERVICES / PURCHASING DIVISION
CITY OF EL PASO

MAIL TO:

CITY OF EL PASO
FINANCIAL SERVICES DEPARTMENT/PURCHASING DIVISION
300 N. CAMPBELL, 1ST FLOOR
EL PASO, TX 79901-1153

OR

HAND DELIVER TO:

CITY OF EL PASO
PURCHASING DIVISION, 1ST FLOOR
300 N. CAMPBELL
EL PASO, TX 79901

FOR ADDITIONAL INFORMATION CONCERNING THIS SOLICITATION, CONTACT:
VIRGINIA VENEGAS, PROCUREMENT ANALYST
Telephone: [915] 541-4654 FAX: [915] 541-4347 Email: venegasVA@elpasotexas.gov

EXPIRATION OF OFFERS

The Offeror agrees, to furnish all items [supplies or services] at the prices offered, and delivered at the designated point or points, within the time set forth below, if this offer is accepted within ONE HUNDRED TWENTY [120] consecutive days from the date set for the receipt of offers.

AMENDMENTS TO SOLICITATION

Receipt of all numbered amendments to Solicitations must be acknowledged:

<u>AMENDMENT</u>	<u>DATED</u>	<u>AMENDMENT</u>	<u>DATED</u>	<u>AMENDMENT</u>	<u>DATED</u>	<u>AMENDMENT</u>	<u>DATED</u>
A001	_____	A002	_____	A003	_____	A004	_____
A005	_____	A006	_____	A007	_____	A008	_____

OFFER SUBMITTED BY

COMPANY NAME AS IT APPEARS ON ORGANIZATION CERTIFICATE ISSUED BY STATE IN WHICH COMPANY WAS ORGANIZED)

STREET ADDRESS

P.O. BOX NUMBER

CITY, STATE AND ZIP CODE

TELEPHONE NUMBER

FAX NUMBER

E-Mail address

☐ PLEASE CHECK PREFERRED ADDRESS FOR RECEIVING SOLICITATION DOCUMENTS.

OFFER EXECUTED BY [PLEASE PRINT]

NAME AND TITLE OF PERSON AUTHORIZED TO OBLIGATE COMPANY

SIGNATURE AND DATE OF OFFER

WITHOUT AN ORIGINAL SIGNATURE ON THIS OR OTHER DOCUMENT BINDING THE OFFEROR, THE OFFER WILL BE REJECTED

NOTE: AWARD OF THE CONTRACT RESULTING FROM THIS SOLICITATION WILL BE MADE TO THE SUCCESSFUL OFFEROR BY AN AUTHORIZED WRITTEN NOTICE, WHICH MAY BE IN THE FORM OF A LETTER NOTICE OF AWARD OR A PURCHASE ORDER ISSUED BY THE CITY OF EL PASO. THIS IS A ONE TIME CONTRACT ☐

CITY OF EL PASO, TEXAS

RFP: 2013-135R

REQUEST FOR QUALIFICATIONS

FOR

**ENVIRONMENTAL LABORATORY SERVICES
FOR AIR QUALITY**

DUE DATE: JUNE 19, 2013

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COOPERATIVE PURCHASING

This contract may be utilized for purchases by other local government entities under an interlocal cooperation agreement, Texas Government Code Chapter 791. Any contract award by the City of El Paso on behalf of another local government entity shall be contingent upon the issuance of a purchase order or execution of a separate contract by the other local government entity. The Contractor must deal directly with the local government entity concerning the placement of orders, issuance of the purchase order, insurance certificates, contractual disputes, invoicing and payment or any other terms and conditions that the other local government entity may require. The actual utilization of this contract award by the other local government entity is at the sole discretion of that other local government entity.

The City of El Paso is acting on the behalf of other local government entities for the sole purpose of complying with Texas competitive bidding requirements and shall not be held liable for any costs, damages, etc. incurred by any bidder with regard to any purchase by another local government entity. The City of El Paso shall be legally responsible only for payment for goods and services in the quantities detailed in the City's own purchase order or contract.

NOTE 1: BIDDERS ARE REQUIRED TO SUBMIT OFFERS ON THE PRESCRIBED FORM(S) (UNALTERED). OFFERS SUBMITTED ON OTHER THAN THE PRESCRIBED FORM(S) MAY BE CONSIDERED INCOMPLETE OR NON-RESPONSIVE. FAILURE TO FURNISH REQUIRED DOCUMENTATION WITH THE BID MAY RESULT IN THE BID BEING DEEMED INCOMPLETE AND NON-RESPONSIVE, RESULTING IN REJECTION.

NOTE 2: THE CITY IS NOT RESPONSIBLE FOR LOCATING OR SECURING ANY INFORMATION THAT IS NOT IDENTIFIED IN THE OFFER AND REASONABLY AVAILABLE TO THE CITY, AND THE CITY WILL NOT BE RESPONSIBLE FOR LOCATING OR SECURING INFORMATION NOT INCLUDED WITH THE OFFER. IN CONDUCTING ITS ASSESSMENT THE CITY MAY USE DATA PROVIDED BY THE BIDDER AND DATA OBTAINED FROM OTHER SOURCES, BUT WHILE THE CITY MAY ELECT TO CONSIDER DATA OBTAINED FROM OTHER SOURCES THE BURDEN OF PROVIDING THOROUGH AND COMPLETE INFORMATION RESTS WITH THE BIDDER.

NOTE 3: THE CITY WILL AWARD THE CONTRACT TO THE BIDDER THAT SUBMITS A BID WHICH REPRESENTS THE "BEST VALUE" TO THE CITY. THE BEST VALUE SHALL NOT BE BASED SOLELY UPON PRICE BUT THE BID WHICH RECEIVES THE HIGHEST CUMULATIVE SCORE FOR EACH OF THE EVALUATION FACTORS DELINEATED HEREIN.

NOTE 4: THE CITY MAY ACCEPT THE LOWEST RESPONSIBLE AND RESPONSIVE BID BASED ON THE TABULATION OF ANY ONE, COMBINATION OR ALL OF THE BASE BID(S), ALTERNATE BID(S), AND/OR OPTIONAL BID(S) BASED ON THE MOST ADVANTAGEOUS PROJECT BID THAT IS DESIRED BY THE CITY DEPARTMENT INVOLVED AND THAT THE CITY COUNCIL IN THEIR SOLE JUDGMENT DETERMINES IS IN THE CITY'S BEST INTEREST AND BENEFIT.

NOTE 5: AT ANY TIME DURING THE TERM OF THE CONTRACT THE PURCHASING MANAGER OR DESIGNATED PERSONNEL MAY INCREASE OR DECREASE THE SCOPE OF SUPPLIES AND OR SERVICES AS HE MAY FIND NECESSARY TO ACCOMPLISH THE GENERAL PURPOSE OF THE CONTRACT.

NOTE 6: ALL GOODS AND SERVICES DELIVERED SHALL COMPLY WITH THE SPECIFICATIONS SET FORTH IN SECTION B. DESCRIPTIVE LITERATURE CONTAINING SUFFICIENT INFORMATION TO DETERMINE PRODUCT COMPLIANCE WITH SPECIFICATIONS MUST ACCOMPANY BID. THE CITY

OF EL PASO RESERVES THE RIGHT TO REQUEST SAMPLES FROM BIDDER(S) PRIOR TO AWARD OF CONTRACT.

NOTE 7: IN ADDITION TO ANY OTHER DISCOUNT, THE CITY IS ENTITLED TO A DEDUCTION FOR FEDERAL EXCISE TAX IF IT IS INCLUDED ON THE MANUFACTURER'S PUBLISHED PRICE LIST FOR APPLICABLE ITEMS, AND CONTRACTOR MUST INVOICE ACCORDINGLY. A FEDERAL TAX EXEMPTION CERTIFICATION WILL BE PROVIDED BY THE CITY, UPON REQUEST.

NOTE 8: BIDDER MUST SUBMIT WITH HIS OFFER A COPY OF THE COMPANY'S ORGANIZATION CERTIFICATE ISSUED BY THE SECRETARY OF STATE OF THE STATE IN WHICH THE BIDDER/PROPOSER WAS ORGANIZED. ALSO, A DBA CERTIFICATE MUST BE PROVIDED IF THE BIDDER/PROPOSER USED A TRADE NAME IN THE SOLICITATION DOCUMENTS OTHER THAN THE NAME UNDER WHICH THE COMPANY WAS ORGANIZED. FURTHER, THE BIDDER/PROPOSER MUST FILL OUT THE AFFIDAVIT IN SECTION D STATING WHAT NAMES THE COMPANY USES AND HAS USED IN THE PAST AND ATTEST THAT ALL SUCH NAMES DESCRIBE THE COMPANY CURRENTLY SUBMITTING A BID OR PROPOSAL.

NOTE 9: ACCURACY OF ESTIMATED QUANTITIES – THE CITY BELIEVES THAT THE NUMBERS USED AS ITEM QUANTITIES TO BE A REASONABLY ACCURATE ESTIMATE; HOWEVER, THE ACTUAL QUANTITY MAY BE MORE OR LESS THAN THE ESTIMATE, AND SHALL NOT BE THE BASIS FOR ANY CHANGE IN THE CONTRACT PER UNIT PRICE. ADDITIONALLY, ESTIMATES ARE MINIMUMS, BUT NOT GUARANTEED MINIMUMS, AND THE CONTRACT COST CAN INCREASE SO LONG AS THE UNIT COSTS REMAIN THE SAME AND INCREASED FUNDS ARE APPROPRIATED IN THE BUDGET.

NOTE 10: ANY MANUFACTURER NAMES, TRADE NAMES, BRAND NAMES, OR CATALOG NUMBERS USED IN THESE SPECIFICATIONS ARE FOR THE PURPOSE OF DESCRIBING AND ESTABLISHING MINIMUM REQUIREMENTS OR LEVEL OF QUALITY AND DESIGN REQUIRED. THEY ARE IN NO WAY INTENDED TO PROHIBIT THE BIDDING OF OTHER MANUFACTURERS' ITEMS OF EQUAL MATERIAL AND QUALITY OR MEANT TO EXCLUDE ANY OTHER MAKE AND MODEL FROM BEING CONSIDERED. VENDORS WHO WISH TO BID A FUNCTIONALLY EQUIVALENT ITEM(S) WHICH MEETS OR EXCEEDS THE SPECIFICATIONS MUST FURNISH WITH THE BID DESCRIPTIVE LITERATURE CONTAINING SUFFICIENT INFORMATION TO DETERMINE PRODUCT COMPLIANCE.

NOTE 11: ALL OFFERS ARE SUBJECT TO THE TERMS AND CONDITIONS OF THIS SOLICITATION. MATERIAL EXCEPTIONS TO THE TERMS AND CONDITIONS, OR FAILURE TO MEET THE CITY'S MINIMUM SPECIFICATIONS, SHALL RENDER THE OFFER NON-RESPONSIVE TO THE SOLICITATION.

NOTE 12: PROMPT PAYMENT DISCOUNTS WILL BE CONSIDERED WHEN DETERMINING THE APPARENT LOWEST BIDDER, PROVIDING THE CITY IS ALLOWED AT LEAST TEN (10) DAYS IN WHICH TO TAKE ADVANTAGE OF THE DISCOUNT.

NOTE 13: AS PART OF THE REQUIREMENT TO ESTABLISH THE RESPONSIBILITY OF THE OFFEROR, THE CITY OF EL PASO MAY PERFORM A PRICE ANALYSIS TO DETERMINE THE REASONABLENESS OF THE PRICE(S) AT WHICH THE SUPPLIES AND/OR SERVICES ARE OFFERED. PRICES THAT ARE SIGNIFICANTLY LOWER THAN THE MEAN OF ALL OFFERS AND THAT APPEAR TO BE UNREASONABLY LOW MAY BE DETERMINED TO BE EVIDENCE OF NON-RESPONSIBILITY, AND CAUSE THE OFFER TO BE REJECTED.

PART 1 – GENERAL INFORMATION

1.1 Background Information

The City of El Paso is seeking a qualified laboratory or laboratories to perform analysis of all or individual selected media in which the laboratory is capable of performing analysis. Media consists of gasoline samples which will require analysis for oxygenate and Reid vapor pressure and analysis of filter media from ambient air monitors which will require analysis for lead and filter weight (pre- and post-exposure).

1.2 Solicitation Purpose

The City shall order all of its services from the successful bidder(s) (contractor(s)) as needed. Only personnel from the ENVIRONMENTAL SERVICES/Air Quality Program are authorized to place orders against this Contract for ENVIRONMENTAL SERVICES. Personnel from other departments may utilize this contract as the need arises but may only authorize orders for their own department.

PART 2 - NOTICES TO PROPOSERS

2.1 Public Disclosure Proposal Information

Offerors are cautioned that once a bid is opened, all information contained therein will be available to the **PUBLIC** unless the information is excepted from the requirements of Government Code Section 552.021 pertaining to Open Records.

The exception that allows the City to protect information that, if released, would give advantage to a competitor or bidder does not apply after the bidding is complete and the contract has been awarded. *Trade secrets, commercial or financial background data and privileged or confidential information* may be excepted from public inspection. If any information contained in your offer qualifies for an exception because it falls into one of the categories above it should be clearly marked "CONFIDENTIAL" and the basis of your claim of confidentiality should be stated. Data so identified will be maintained as a protected record. Offerors who claim that information contained in a bid should be protected from public disclosure after the award of the contract may be asked to support such claim if the City receives an Open Records request for the information and requests a determination by the Attorney General. [Rev. 04-03-98]

2.2 Bid Net Notification

NOTE: ANY CHANGES IN DUE DATE OR MATERIAL CHANGES FOR ANY RFP'S/SOLICITATIONS WILL BE POSTED ON THE SOLICITATIONS PAGE OF THE CITY OF EL PASO PURCHASING DEPARTMENT'S WEBSITE: http://www.elpasotexas.gov/financial_services/invitations.asp

It is the bidder's responsibility to ensure that they have all pertinent information regarding solicitations, including all amendments prior to submitting their offer. Please check the website, even after submitting a bid, to ensure that you have all amendments as they may be posted at any time, up to and including the day of bid opening.

2.3 COMMUNICATIONS

2.3.1 Cone of Silence/Anti Lobbying Policy

The City's Cone of Silence/Anti Lobbying Policy was adopted to ensure a fair and competitive bidding environment by preventing communication between City officials, employees, or representatives and parties involved in the bidding process that could create an unfair advantage to any party with respect to the award of a city contract.

The Cone of Silence period begins on the day that the request for proposal (RFP), request for qualifications (RFQ), or highest qualified bid (including best value and competitive sealed proposals) is advertised, or the day a source selection or the giving of a notice of a proposed project is made, and ends on the day that a recommendation of a contract award is placed on the City Council agenda.

The Cone of Silence/Anti Lobbying Policy prohibits any communication or lobbying activities during the Cone of Silence period, by any person, including but not limited to, bidders, lobbyists or consultants of bidders, service providers or potential vendors and any the following:

1. City Staff and City Consultants, including any employee of the City of El Paso, any person retained by the City of El Paso as a Consultant on the project, or any person having participated in the development, design, or review of documents related to the project.
2. City Officials, including the Mayor, Council Representatives and their respective staff.
3. Members of the City's Selection Committee, whether City employees or outside experts appointed or selected by the City.

The Cone of Silence/Anti Lobbying Policy does not apply to:

1. Questions of Process and Procedure, including oral communications with the Purchasing Manager or Contract Administrator, provided the communications are strictly limited to matters of process or procedure already contained in the solicitation document. A minimum of ten days will be provided for questions during solicitation unless otherwise stated in the Solicitation Schedule of Events in the documents.
2. Pre-Proposal/Pre-Bid Conferences, including oral communications at pre-proposal or pre-bid conferences, oral presentations before selection committees, contract negotiations, and public presentations made to the Mayor and Council Representatives during a duly noticed public meeting.
3. Written Communications, to the Purchasing Analyst/Agent identified in the solicitation.

A person who knowingly or intentionally lobbies in violation of the provisions of this policy, or who shall knowingly obstruct or prevent compliance with this policy shall be guilty of a misdemeanor.

Furthermore, any person who knowingly or intentionally violates the provisions of this policy, with respect to the solicitation or award of a discretionary contract may be prohibited by the city council from entering into any contract with the city for a period not to exceed three years.

2.3.2 Request for Clarification

In order to meet the City's schedule it is extremely important that requests for clarification or additional information be submitted in writing no later than **June 13, 2013**. Questions submitted after this date may not elicit a response. All proposals or requests for clarification should be sent to the following:

BY E-MAIL

VIRGINIA VENEGAS
PROCUREMENT ANALYST
Fax: (915) 541-4347
Email: venegasVA@elpasotexas.gov

IN WRITING (MAIL OR HAND DELIVERY)

City of El Paso
Financial Services Department/Purchasing Division
300 N. Campbell, 1ST Floor
El Paso TX 79901-1153
Attn: VIRGINIA VENEGAS

2.4 Schedule of Events

The following Schedule of Events represents the City's estimate of the timetable that will be followed in connection with this solicitation:

EVENTS	DATE AND/OR TIME
Release Request for Qualifications	06/04/2013 & 06/11/2013
Last Day for Offerors to Submit Written Questions	06/13/2013
Answers provided	06/18/2013
Submission of proposals	06/19/2013
Evaluations	Week of 06/24/2013
Negotiations	TBD
Contract Award Date	07/16/2013

The City reserves the right, at its sole discretion, to adjust this Schedule of Events as it deems necessary. If necessary, the City will communicate adjustments to any event in the Schedule of Events in the form of an amendment. Amendment to this RFQ will only be issued and posted on the City's website at:

http://www.elpasotexas.gov/financial_services/invitations.asp

2.5 Contract Period (Initial and Option Terms)

The initial term of the Contract will be for: **THIRTY SIX (36) MONTHS**. The contract will include options for the City to extend the contract, at the sole discretion of the City, for an additional one (1) year period, subject to City and the successful Respondent negotiating fees and other terms that are mutually acceptable to the parties.

2.6 Notices of Instruction to Offerors

1. Signature of Offer to person Authorized to Sign

All offers shall bear an original signature, in ink, of a responsible officer or agent of the company. Failure to sign the OFFER portion of the SOLICITATION, OFFER AND AWARD form, or to include a substitute signed document binding the offeror, will be the basis for declaring a proposal non-responsive.

2. Effective Period of Proposals

Proposals should expressly state that the offer (including all rates, fees, or cost proposals submitted in response to this RFQ, as well as the scope and character of the services described in the proposal) will remain in effect until at least 120 consecutive days from the date set for the receipt of offers and may be accepted by the City of El Paso at any time on or before such date.

3. Required Number of Copies

Offer (bid or proposal) must be submitted in original form with SEVEN (7) additional copies, unless otherwise stated herein.

4. Offer Submission Instructions

OFFER MUST BE SEALED WHEN PRESENTED TO THE PURCHASING DIVISION. Offers will be received by the City of El Paso until **2:00 P.M., local time, on WEDNESDAY JUNE 19, 2013.** **Proposals will not be publicly opened and read aloud.**

5. Addressing Instructions

The envelope containing the offer must be addressed as follows:

City of El Paso
Financial Services Department/Purchasing Division
300 N. Campbell, 1ST Floor
El Paso, Texas 79901-1153
Attn: Purchasing Manager

Also, write the Request for Qualification Number, Request for Qualification Title, and Proposal Opening Date clearly on a visible section of the envelope.

6. Labeling Of Proposals/Bids [Rev 6/15/05]

The Due Date and Solicitation Number must be written on the outside of the package containing the offer. The City Purchasing Division may open any unlabeled submittal to identify it properly. Offerors are required to identify their package to protect the integrity of their proposals and to fully avail themselves of the evaluation and selection process.

7. Offeror Delivery Responsibility

Bids received at the Purchasing Office after the specified date and time will not be accepted. Package delivery services such as FedEx, UPS, etc. deliver packages addressed to the Purchasing Manager directly to the Purchasing Division. U.S. Postal Service deliveries, including Express Mail, are **only delivered to the Mail Room** at City Hall and may or may not be delivered by the Mail Room to the Purchasing Division by the time and place proposals are recorded. The offeror accepts all responsibility for delivering its offer to address stated above within the specified time or the offer will be considered non-responsive and will be mailed back unopened. If the envelope does not reflect a return address, it will be opened for the sole purpose of obtaining the return address.

8. Descriptive Literature

Descriptive literature, where applicable, containing complete scope of services or other information sufficient for the City to determine compliance with the specifications must accompany each proposal, in DUPLICATE. If an Offeror wishes to furnish additional information more sheets may be added.

The City is not responsible for locating or securing any information that is not identified in the offer and reasonably available to the City, and the City will not be responsible for locating or securing information not included with the offer. In conducting its assessment the City may use data provided by the Offeror and data obtained from other sources, but while the City may elect to consider data obtained from other sources the burden of providing thorough and complete information rests with the Offeror.

9. Offer Documents, Supporting Literature and Related Data

Related data, where applicable, will be made part of the proposal. All documents, literature and related data submitted as an offer become the property of the City of El Paso.

10. Alternate Offers

The City of El Paso is not accepting alternate proposals for review, evaluation and/or consideration.

11. Solicitation Changes or Clarifications

Requests for changes or clarifications to this solicitation are welcomed by the Purchasing Division for its consideration, provided the requests are in writing and received by **June 13, 2013**. Requests received after that time may not elicit a response. Refer to REQUESTS FOR CLARIFICATION in Communication Section for more details.

12. Acknowledgement of Solicitation Amendments

All Amendments will be acknowledged on the *Solicitation of Offers* form (first page of this solicitation). Failure to do so may cause the proposal to be rejected. It is the Offeror's responsibility to ensure that all information regarding the RFQ, including all amendments, is included in the offer. Amendments may be posted at any time up to and including the due date.

13. Proposal/Bid Preparation Cost

This solicitation does not commit the City of El Paso to pay any costs incurred in preparing and submitting the proposal or to contract for the services specified. This RFQ is not to be construed as a contract or a commitment of any kind, nor does it commit the City of El Paso to pay for any costs incurred in the preparation of a formal presentation, or for any costs incurred prior to the execution of a formal contract.

14. Additional Information

For further procedural information concerning this Request for Qualifications contact the point of contact for contract administration (refer to in the Communication Section for contact details).

15. Notification to Unsuccessful Offerors

All awards are made by the City Council of the City of El Paso. All City Council agenda are posted on the City of El Paso's Web Page for review by all Offerors. The URL is: <http://www.elpasotexas.gov>.

16. Acceptance or Rejection of Proposals

The City reserves the right to accept or reject any or all proposals, to waive all minor technicalities, and to accept the proposal or proposal determined to be the most advantageous to the City. Additionally, the City may accept a proposal subject to an exception if, in the sole judgment of the City, the proposal meets or exceeds the City's specifications.

17. Failure to Respond to Solicitations

Any offeror who fails to respond to three consecutive solicitations will be purged from the mailing list. It is the offeror's responsibility to remain on the mailing list under his requested commodity classes.

18. Time

[RESERVED]

19. Debriefing Requests

A written request for a debriefing should be directed to the Analyst identified in **Request for Clarification in Part 2, Item 2.3.2** within five (5) days after the date of award. Debriefing requests will be scheduled with the appropriate evaluation committee and Purchasing representative.

Only an Offeror who has actually submitted a proposal may appeal an award decision.

Failure to follow the requirements of the Protest procedures established by the City of El Paso, Texas, shall

constitute a waiver of all protest rights. Protest must be made after the Council agenda has been posted and by 5 p.m. the day before the Council meeting in which the award will be made. The Offeror must write a letter to Bruce D. Collins, Purchasing Manager, using the phrase "Proposal Protest" to the address listed above on Page 6. Protest must be sent by certified or registered mail or delivered in person. Note: the recommendation for award is posted on the City's website at least 72 hours before each Tuesdays Council meeting.

The written protest should include 1) the Request for Proposal number and should clearly state, with particularity, the relevant facts believed to constitute an error in the award recommendation, or desired remedy; 2) a specific identification of the statutory or regulatory provision that the Protesting Offeror alleges has been violated and the provisions entitling the Protesting Offeror to relief; 3) a specific factual description, with particularity, of each action by the City that the Protesting Offeror alleges to be a violation of the statutory or regulatory provision that the Protesting Offeror has identified pursuant to item (2) of this paragraph (mere disagreement with the decisions of City employees does not constitute grounds for protest). If there is no disputed issue of the material fact, the Protest must indicate this as well.

Only the information provided within the protest period will be considered for response.

PART 3 - SCOPE OF WORK

3.1 Scope of Work and Minimum Requirements

SCOPE OF WORK

The services under this contract include laboratory analysis of gasoline for oxygenate and Reid vapor pressure; and laboratory analysis of filter media for lead content and filter weight (Pre- and Post- exposure). The work shall include providing chain-of-custody, coolers and labels, delivery of coolers, analysis, quality assurance and quality control, return of filter media and reporting. The City will be responsible for the shipment of collected samples to the laboratory. The work is required to be performed within a standard turnaround time (5-7 working days) unless rush analysis is specified. All air filters must be returned to the City of El Paso - Air Quality Program after completion of analysis.

Although there will be no guarantee of quantities, the following is an estimate of the number of analyses that are anticipated over the term of the contract. The actual quantities may be more or less than estimated.

Oxygenates (quantity/year)	Reid Vapor Pressure (RVP) (quantity/year)	Lead in Air Filter Media (quantity/year)	Weights – Pre- Exposure (quantity/year)	Weights – Post- Exposure (quantity/year)
624	624	240	650	650
624	624	240	650	650

The City anticipates that gasoline analysis for RVP will be required on an annual basis from May 1 through September 15 of each year. The gasoline oxygenate analysis is also on an annual basis from October 1 through April 15 of each year. The filter media analysis for lead and weight will be year round. The City may require analysis on an alternate schedule or in addition to regularly scheduled sampling events

The laboratory will be required to meet the reporting limits established by the TCEQ's and EPA's Quality Assurance Project Plan (QAPP). The following are the anticipated minimum reporting limits; however, reporting limits are subject to change and may be lower than the levels provided below.

Parameters	Minimum Laboratory Detection Limits	
Gasoline Fuel	<i>PSI</i>	<i>WT%</i>
RVP	7.9 max	N/A
Oxygenates	N/A	2.0 min
Air Filter Media		<i>(µg/m3)</i>
Lead		≤0.15
	<i>Below Actuals</i>	<i>Above Actuals</i>
Filter Weights	-0.005	+0.003

NOTES:

1. Analysis will be performed using the above listed methods or an equivalent Environmental Protection Agency (EPA) - approved method accepted by the City of El Paso.
2. No premium shall be paid for work performed after business hours or on weekends.
3. This shall be a requirements type contract, under which the City shall order all its requirements for the above services from the successful bidder during the period of performance. There will be no guarantee as to the number of analysis over the term of the contract.
4. Refer to 40 CFR Part 50, Appendix D, method EQL-0400-140 for approved analysis of lead in filter media.
5. Calibration of the filter weight scale must be done in accordance with National Institute of Standard and Technology (NIST) methodology for Analytical Balances. A daily/before use verification of NIST certified weights for all balances used for this project must be performed. In addition, a certificate of calibration that documents the NIST traceability of the weights used during the balance calibration verification measurements to certify NIST Class I weights as required. The calibration of the scale will be performed using the above listed methods or an equivalent EPA-approved method accepted by the City of El Paso.
6. All sample containers will be provided by the City of El Paso, Air Quality Program.
7. This is an open bid. The Bidder may submit a bid for all or each individual Item 1, 2, 3, 4, or 5 for which they intend to provide services.

I. GENERAL REQUIREMENTS

1. Program. All activities must be coordinated through the Director of Environmental Services or his/her designated appointee.
2. This contract will be administered by the Environmental Services Department – Air Quality The laboratory shall supply the City with the appropriate container labels, chain-of-custody (COC), and coolers needed for shipping to the laboratory. The laboratory will be responsible for delivering these items to the City at least seven days prior to sample collection as scheduled.
3. The following are typical requirements for air filter media and gasoline sample containers, preservation and storage. The laboratory shall provide the appropriate storage for the required parameter and test method.

Parameter	Container Type	Preservative	Maximum Holding Time	Minimum Volume
Gasoline (RVP)	Clear 100ml Glass w/Teflon cap	Ice – samples need to be in a cool (4°C), dry storage	Analyze immediately	80 ml
Gasoline (OXY)	Clear 100ml Glass, with Teflon cap	Ice – sampled need to be in a cool (4°C), dry storage	Analyze immediately	80 ml
Lead	Zip lock plastic bag	N/A	5 years	N/A
Filter weight	Supplier Box – Pre-exposed; Zip lock plastic bag – post-exposed	N/A	1 month	N/A

4. The City will be responsible for the shipment of samples to the laboratory in accordance with standard sample shipping procedures. Gasoline samples will be sent via ground shipping in accordance with all applicable shipping requirements. The laboratory shall provide for sample receipt Monday through Saturday, as needed. Special instructions for Saturday delivery shall be provided by the lab.
5. Upon receipt of the samples by the laboratory, the COC shall be signed and dated, the sample lot shall be verified with the information included on the COC, and the integrity of the sample containers shall be checked. If a discrepancy is identified, the laboratory will notify the City and the discrepancy shall be resolved prior to sample analysis. Any concerns over sample integrity (i.e. breakage, elevated temperature) shall be recorded on the COC by the laboratory at the time of receipt of the samples. The COC shall remain with the samples until the analysis are completed and then shall be attached to the completed laboratory report. The laboratory shall maintain control and security of the samples from the time of receipt until proper disposal. All samples shall be analyzed within the required holding time. If samples are received by the laboratory outside of the holding time then it shall be documented.
6. Laboratory analysis shall be performed in accordance with NELAC (National Environmental Laboratory Accreditation Conference) accreditation standards. Quality assurance and quality control samples (i.e. matrix spikes, matrix spike duplicates and method blanks) shall also be analyzed in accordance with these requirements.
7. Upon completion of laboratory analysis, a laboratory case narrative (LCN) shall be prepared by the laboratory and shall specifically report the following information:
 - i. State the exact number of samples, testing parameters, and sample matrix.
 - ii. The name of the laboratory involved in the analysis. If more than one laboratory is used, all laboratories shall be identified in the case narrative.
 - iii. State the test objective regarding samples.

- iv. Explain each failed precision and accuracy measurement determined to be outside of the laboratory and/or method control limits.
 - v. Explain if the effect of the failed precision and accuracy measurements on the results induces a positive or negative bias.
 - vi. Identify and explain problems associated with the sample results, along with the limitations these problems have on data usability.
 - vii. A statement on the estimated uncertainty of analytical results of the samples when appropriate and/or when requested.
 - viii. A statement of compliance and/or noncompliance with the requirements and specifications. Exceedance of holding times and identification of matrix interferences will be identified.
 - ix. Identify any and all applicable quality assurance and quality control samples that will require special attention by the reviewer.
 - x. A statement on the quality control of the analytical method of the permit and the analytical recoveries information shall be provided when appropriate and/or when requested.
8. In addition to the LCN, the following information shall also be provided by the laboratory for all analytical data:
- i. An analytical report that documents the results and methods for each sample and analyze to be included for every analytical testing event. These test reports shall document the reporting limit/method detection limit the laboratory used.
 - ii. A table identifying the field sample name with the sample identification in the laboratory report.
 - iii. The completed chain of custody.
 - iv. A release statement from the laboratory manager stating "I am responsible for the release of this laboratory data package. This data package has been reviewed by the laboratory and is complete and technically compliant with the requirements of the methods used, except where noted by the laboratory in the attached exception reports. By my signature below, I affirm to the best of my knowledge, all problems/anomalies, observed by the laboratory as having the potential to affect the quality of the data, have been identified by the laboratory in the Laboratory Review Checklist, and no information or data have been knowingly withheld that would affect the quality of the data."
 - v. A text or excel file of the analytical results, submitted in electronic format.
9. The reporting required under this contract shall be provided within 5-7 working days of sample receipt. The official hardcopy report may be submitted within 15 working days.
10. The Contractor shall open his facility for inspection upon request by the Director of Environmental Services or his/her designated appointee. The Contractor will be given at least 24 hours notice of inspection.

II. LABORATORY QUALIFICATIONS

The laboratory awarded this contract shall be NELAC (National Environmental Laboratory Accreditation Conference) accredited under the Texas Laboratory Accreditation Program. Please provide document/certification. The laboratory shall provide documentation demonstrating that they are NELAC accredited. The laboratory will provide a five [5] history and disclose any violations, fines, or penalties. The Contractor shall notify the City of any change in the status of their certification with NELAC. The laboratory shall also provide a copy of the laboratory's standard operating procedures and quality assurance/quality control plan.

III. PERSONNEL EXPERIENCE

The laboratory shall provide resumes for key personnel, such as, the laboratory services coordinator, quality assurance officer, instrumentation chemist, methods development and training chemist, and technicians who will be performing the work under this contract. The laboratory personnel shall have the experience, education and training necessary for their position.

IV. SPECIFIC LABORATORY EXPERIENCE

The laboratory shall demonstrate through references and a project listing that they have prior experience with air filter media and gasoline analysis. If the laboratory does not have this specific experience, they shall demonstrate similar experience.

PART 4 - PROPOSAL FORMAT AND SUBMISSION

4.1 Proposal Format and Structure

All submissions must follow the submission guidelines below. The City reserves the right to reject proposals not in compliance with these requirements.

1. Use fonts no smaller than Times New Roman, 10 point. Maximum length including title page, the entire proposal, and appendices should not exceed 100 pages.
2. All pages must be numbered.
3. Address qualifications criteria in the order presented in PART 5 – PROPOSAL EVALUATION.
4. Major sections must have page breaks between them and the following sections.
5. The proposal must be signed and titled by a duly authorized representative of the Offeror.

In addition, the City requires that all proposals contain the following:

6. Title Page – Clearly label with the RFQ number, RFQ title, Offeror's name, mailing address, and fax number, and the name, telephone number, and email address of a contact person.
7. Table of Contents – Identify the page location of each major section.
8. Introduction – Provide brief narrative of background and general qualifications of the Offeror, including any experience with services/products similar in scope and/or size to those requested in this RFQ.

9. Offeror's Proposal – Include all pages from this Request for Qualifications in addition to any other materials submitted by the Offeror. State in succinct terms the Offeror's understanding of the services to be provided and how the Offeror anticipates being able to meet the scope of work as delineated within Part 3 Scope of Work.
10. Contract Clauses and Forms – Include all pages and completed forms. In addition to the above information, describe any prior or pending litigation, civil or criminal, involving a governmental agency or which may affect the performances of the services to be rendered. This includes any instances in which the Offeror or any of its employees, subcontractors, or sub-consultants is or has been involved within the last three years.
11. Client list – include points of contact and relevant information from three or more organizations that have used your company for similar products/services within the last three years.
12. Response must demonstrate your comprehension of the objectives and services from the RFQ. Do not merely duplicate the Scope of Work as presented within this RFQ.
13. Appendices – include any additional information that the Offeror deems important to the decision process but that is not specified elsewhere in the RFQ.
14. Identify by name and title the individual responsible for the administration of the project. (That is, the individual who has the responsibility to oversee the contract, not a firm's contract negotiator, etc.)
15. Identify the project organization and staffing. A project organizational chart is to be provided, along with resumes of the personnel assigned to the project. Level of staff for work to be performed under this Contract. Proposals must describe the work to be performed by the individuals you name to perform essential functions and detail their specific qualifications and substantive experience directly related to this RFQ. A response prepared specifically for this RFQ is required. Marketing resumes often include non-relevant information that may detract from the evaluation of a proposal. Lists of projects are not useful. Focus on individual's specific duties and responsibilities and how project experience is relevant to the requirements of this RFQ.
16. A list of references that can be contacted to discuss the performance on similar work. If available, provide a sample of comparable data your firm has generated for a similar project.

References that are not relevant to RFQ should not be included. Therefore, the References provided should be directly related to the requirements in the SOW. The City is particularly interested in government references. The City may obtain other information by sending out questionnaires and/or through other sources. References other than those identified by the Offeror may be contacted by the City with the information received used in the evaluation.

The Offeror shall provide references from at least three contracts, within the last three years that are similar in size, scope and complexity to Part 1 – ENVIRONMENTAL LABORATORY SERVICES FOR MUNICIPAL SOLID WASTE FACILITIES.

17. Additional Information. Offerors are asked not to include loose brochures (e.g. general marketing material). **BROCHURE MATERIAL WILL NOT BE CONSIDERED FOR REVIEW.** Only pertinent information should be submitted.

4.2 Copies Required

Paper – One (1) complete, original copy (signed in blue ink where required) and **Seven (7) copies**, both contained in a single sealed submission. All responses shall contain those pages on which prices, other information, or signatures are required.

Electronic – One (1) electronic copy on a CD-ROM or flash drive. Format of the electronic copy must be either .doc (readable by Microsoft Word 2003 or 2007) or .pdf (readable by Adobe Reader 9). The content of the electronic file shall be an exact submission of the hard copies of the proposals (i.e., documents should bear signatures, where applicable and be filled out entirely). In event of discrepancy/conflict between the hard copy and electronic copy will govern.

4.3 Proposal Cost

The term of this contract shall be for: **THIRTY SIX (36) MONTHS** with a one (1) year option to extend the contract if both parties agree in writing prior to the contract expiration date.

4.3.1 Proposal Cost

Offerors should include the total cost of the ENVIRONMENTAL LABORATORY SERVICES FOR MUNICIPAL SOLID WASTE FACILITIES. Assumptions made by the Offerors about the needs, functions and/or requirements of the City, outside of those contained in this solicitation or provided to Offerors subsequent to the issuance of this solicitation, and used to calculate costs should be clearly noted in the response.

Proposal Cost

Proposal Cost is not an evaluation factor however; the City requests that respondents **submit a proposal cost for the services requested in this solicitation in a separate envelope** and write the Request for Qualification Number, Request for Qualification Title, and Proposal Opening Date clearly on a visible section of the envelope and mail or hand deliver to the address specified in Section 2.6, #4 Offer Submission Instructions.

Pricing given below by the laboratory shall include cost of containers, chain-of-custody, coolers, labels, cooler/container delivery, analysis, quality assurance and quality control, sample disposal, and reporting in accordance with PART 3, Scope of Work and Minimum Requirements. City will be responsible for the cost of shipment of collected samples to the laboratory. No personnel time or other additional add-charges will be allowed unless previously negotiated and approved by the Director of Environmental Services or his/her appointed designee. All pricing assumes standard turnaround time (10 – 15 working days) unless rush analysis is specified. The rates submitted will remain in effect for the duration of the contract and any contract extension period.

UNIT PRICE LIST**Group 1****Item 1**

Parameters	Method	Unit	Estimated Quantity (per year)	Unit Rate (\$/analysis)	Extended Cost (Unit Rate x Est. Quantity)
Oxygenates	ASTM D4815	Each	624	\$	\$
Reid Vapor Pressure (RVP)	ASTM D5191	Each	624	\$	\$
Total Insert Total on Bid form Group 1- Item 1 →					\$

Group 2**Item 1**

Parameters	Method	Unit	Estimated Quantity (per year)	Unit Rate (\$/analysis)	Extended Cost (Unit Rate x Est. Quantity)
Lead	EQL-0400-140 40CFR 50, Appendix D	Each	240	\$_____	\$_____
Total Insert Total on Bid Form Group 2- Item 1 →					\$_____

Item 2

Parameters	Method	Unit	Estimated Quantity (per year)	Unit Rate (\$/analysis)	Extended Cost (Unit Rate x Est. Quantity)
Weights – Pre-Exposure	NIST for Analytical Balances	EA	650	\$_____	\$_____
Weights – Post-Exposure	NIST for Analytical Balances	EA	650	\$_____	\$_____
Total Insert Total on Bid form Group 2 – Item 2 →					\$_____

PROMPT PAYMENT

Unless a prompt payment discount is offered and accepted by the City of El Paso, payments will be made to the Contractor within thirty (30) days following acceptance by the City of El Paso of goods or services, and receipt of a properly prepared invoice by the City Department identified in the Invoice Instructions set forth on the Purchase Order, whichever is later. Any discount for prompt payment will be calculated from the day goods or services are accepted or when a properly prepared invoice is received. Payments will be considered to have been made on the date of mailing (postmark) of the payment check or, for an electronic funds transfer, the specified payment date. Invoices are to be submitted in single copy to the appropriate Department.

PAYMENT TERMS: Please mark appropriate block.

_____ % - 10 Days ☐
_____ % - 20 Days ☐
_____ % - 30 Days ☐
Net - 30 Days ☐

Late Payment fees will incur at the State of Texas statutory rate.

PART 5 - PROPOSAL EVALUATION

5.1 Evaluation Factors

The proposal evaluation process is designed to award the contract, not necessarily to the Respondent of least cost, but rather to the Respondent with the best combination of attributes (i.e., qualifications and experience, cost) based upon the evaluation factors specifically established for this RFQ.

Respondents must provide all information outlined in the Evaluation Factors to be considered responsive. Proposals will be evaluated based on the responsiveness of the Respondent's information to the Evaluation Factors which will demonstrate the Respondent's understanding of the Evaluation Factors and capacity to perform the required services of this Request for Proposals.

Proposals will be evaluated based on the following Evaluation Factors:

EVALUATION FACTORS	MAXIMUM POINTS
A. Quality of Response	25 Points
B. Experience & Qualifications	50 Points
C. Response of References	20 Points
D. Past Relationship	5 Points
TOTAL	100 Points

The establishment, application and interpretation of the above Evaluation Factors shall be solely within the discretion of The City of El Paso ("the City"). The City reserves the right to determine the suitability of proposals on the basis of all these factors.

5.2 Evaluation Factor Description

The maximum points that shall be awarded for each of the Evaluation Factors are detailed and described below.

EVALUATION FACTOR A

Quality of Response25 Points

- Respondents evaluated on responsiveness to proposal request
- A. Readability, completeness, understanding of project scope 20 Points
- B. Adherence to response format requirements 5 Points

EVALUATION FACTOR B

Experience and Qualifications..... 50 Points

Provide a full description of the experience you have in providing the requested service. Provide a resume detailing your past history and background. Identify projects of similar size and scope. Contractor should have experience in the following areas:

- Respondents evaluated on experience and qualifications
- A. Qualifications in performing specific job requirements stated 25 Points
- B. Experience in management, technology, accounting, etc. 25 Points

EVALUATION FACTOR C

Response of References.....20 Points

Note: Score for each reference will be determined by dividing the total score by 3 references (i.e. 20 total points ÷ 3 = 6.67 points per reference).

- Response and quality of references to offeror’s ability to:
- A. Provide services as defined.
- B. Communicates and produces high-quality results.
- C. Completes services on-time.

EVALUATION FACTOR D

Past Relationship.....5 Points

Respondents evaluated on clientele and reference checks

MAXIMUM TOTAL POSSIBLE POINTS100 Points

5.3 Evaluation and Award Process-General Information

- A. All offers are subject to the terms and conditions of this solicitation. Material exceptions to the terms and conditions, or failure to meet the City's minimum specifications, shall render the offer non-responsive to the solicitation.

- B. Any award made under this solicitation shall be made to the Offeror who provides goods or services, other than professional services as defined by Section 2254.002 of the Government Code, that are determined to be the most advantageous to the City. Factors to be considered in determining the proposal most advantageous to the City are included below.
- C. After the highest ranked offeror is selected by the evaluation committee, prompt payment discounts will be considered when making a determination that the negotiated price is fair and reasonable, providing the City is allowed at least ten (10) days in which to take advantage of the discount.
- D. As part of the requirement to establish the responsibility of the Offeror, the City of El Paso may perform a price analysis to determine the reasonableness of the price(s) of the highest ranked Offeror's professional services. Prices that appear to be unreasonably low may be determined to be evidence that pricing is not fair and reasonable and cause the Offer to be rejected.

5.4 Evaluation and Award Process

- A. An Evaluation Committee shall be established to evaluate responses based solely on the Evaluation Factors set forth below. Factors not specified in the RFQ will not be considered. The City reserves the right to waive any minor irregularities or technicalities in the offers received. Responses will be evaluated on an individual basis against the requirements stated in the RFQ.
- B. Minor problems of completeness or compliance may be called to the attention of Offerors for clarification. Substantial deviations from specifications or other requirements of this RFQ will result in disqualification of an offeror's response.
- C. Award of a contract for professional services will be made on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. Detailed evaluation of the responses to this RFQ will involve a determination of the most favorable combination of various elements contained in this RFQ.
- D. During the evaluation process, the City reserves the right, where it may serve in the City's best interest, to request additional information or clarifications from Offerors, or to allow corrections of errors or omissions.
- E. All responses meeting the minimum specifications of the scope of work will be ranked based on the evaluation criteria listed. After initial evaluations, the Evaluation Committee will determine a competitive range. The competitive range includes the proposals that have a reasonable chance of being selected for award considering all aspects of the RFQ. If required, only those respondents within the competitive range may be selected for an oral presentation and/or interview.
- F. A presentation/interview process may be arranged to assist the Evaluation Committee in differentiating those respondents within the competitive range. Points may be deducted or added to respondent's preliminary score as deemed necessary by the Evaluation Committee.
- G. At the completion of the evaluation period, the City will enter into negotiations with the highest ranked offeror. If the City cannot come to an agreement with that offeror it will formally end negotiations with that respondent and begin negotiations with the next highest ranked respondent.
- H. The City reserves the right to negotiate the final scope of services, price, schedule, and any and all aspects of this solicitation with the highest ranked respondent.

- I. Responses to this RFQ that are considered non-responsive will not receive consideration. The City reserves the right at any time during the evaluation process to reconsider any proposal submitted. It also reserves the right to meet with any Respondent at any time to gather additional information. Furthermore, the City reserves the right to delete, add or modify any aspect of this procurement through competitive negotiations up until the final contract signing.
- J. The successful Offeror’s response to this RFQ will be incorporated into the final contract. Any false or misleading statements found in the proposal will be grounds for disqualification or contract termination. Submission of a proposal indicates acceptance by the Offeror of the conditions contained in this RFQ, unless clearly and specifically noted in the proposal and confirmed in the contract between the City and the Offeror selected.
- K. The City reserves the right to award this contract to one Respondent or to make multiple awards. The city may reject any or all offers if such action is in the City’s interest, award, waive informalities and minor irregularities in offers received, and award all or part of the requirements stated.

PART 6 - MANDATORY SUBMITTALS

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Responsibility Determination

The responsibility determination includes consideration of a Respondent's integrity, compliance with public policy, past performance with the City (if any), financial capacity and eligibility to perform government work (e.g., debarments/suspension from any Federal, State, or local government). The City reserves the right to perform whatever research it deems appropriate in order to access the merits of any Respondent's proposal.

A. Financial Capacity Determination

FINANCIAL INFORMATION

Financial Statements. Please provide financial statements for your organization for at least the last two

(2) fiscal years as follows:

If a **publicly** held organization:

- (1) Consolidated financial statements as submitted to the Securities and Exchange Commission (SEC) on Form 10K.
- (2) The most recent Forms 100 since the last Form 10K was submitted.
- (3) Any Form 8K's in your last fiscal year.

If a **privately** held organization:

- (1) Balance sheet for your last two fiscal years certified by an independent Certified Public Accountant.
- (2) Statement of income of your last two fiscal years certified by an independent Certified Public Accountant.

Management discussion and analysis of your organization's financial condition for the last two years indicating any changes in your financial position since the certified statements were prepared.

If not considered proprietary, any recent Management Letters.

Evidence of Financial Responsibility.

Submit evidence of financial responsibility. This may be a credit rating from a qualified firm preparing credit rating or a bank reference.

The City reserves the right to confirm and request clarification of all financial information provided (including requesting audited financial statements certified by an independent Certified Public Accountant), or to request documentation of the Offeror's ability to comply with all of the requirements in the Proposal Documents.

Incomplete disclosures may result in a proposal being deemed non-responsive.

Note: Dun & Bradstreet has the capability to obtain information on past performance on specific contractors. Accordingly, the Airport may require Offerors to provide a copy of a recent past performance report prepared by Dun & Bradstreet. The Past Performance Evaluation Report provided to the Offeror by Dun & Bradstreet shall be submitted, not later than 14 calendar days after request by the City. The Offeror shall be responsible for the cost of Dun & Bradstreet's preparation of the report.

B. Technical Capacity Determination

The City may conduct a survey relating to the Respondent's record of performance on past and present projects that are similar to the scope of work identified in this RFQ, which may include services/projects not identified by the Respondent. The City reserves the right to perform whatever research it deems appropriate in order to assess the merits of any Respondent's proposal. Such research may include, but not necessarily be limited to, discussions with outside Respondents, interviews and site visits with the Respondent's existing clients and analysis of industry reports. The City will make a finding of the Respondent's Technical Resources/Ability to perform the RFQ scope of work based upon the results of the survey.

A Respondent will be determined responsible if the City determines that the results of the Technical Resources/Ability survey reflect that the Respondent is capable of undertaking and completing the RFQ scope of work in a satisfactory manner.

EQUIPMENT, PERSONNEL AND RESPONSIBILITY DETERMINATION (Vendor must provide and/or identify the following as applicable)

NOTE: Failure to provide the following documents will deem the bid non-responsive.

1. Submit a list of primary equipment the vendor intends to use in the execution of this contract to include quantity, brand, type, and model year.

Submitted - YES ☐ - NO ☐

2. Submit the number of personnel it employs that can fulfill the contract requirements.

Submitted - YES ☐ - NO ☐

- 3A. If a publicly held organization, submit financial statements for the last two (2) fiscal years as described above under Financial Capacity Determination

Submitted - YES ☐ - NO ☐

- OR -

- 3B. If a privately held organization, submit balance sheets and statement of income for the last two years certified by an independent Certified Public Accountant.

Submitted - YES ☐ - NO ☐

If the vendor cannot provide Certified documents listed in 3B above, then provide a letter requesting a waiver for this requirement and 1) provide the balance sheets for the last two years, 2) provide the name of the Bank(s) the vendor uses for its' business transactions, 3) provide the line of credit it has with the bank, if applicable, and 4) provide the Income Tax returns for the last two years with Profit Loss statements if available.

ACKNOWLEDGEMENT BY OFFEROR

The undersigned hereby acknowledges and agrees that:

1. The Request for Proposals has been reviewed by the undersigned prior to the execution of this proposal;
2. The City may reject any or all proposals submitted;
3. The City may award the privilege to the Offeror that, in the sole opinion of the City, provides best value to the City and the public interest;
4. The decision of the City in selection of the successful Offeror shall be final, and not subject to review or attack; and
5. This proposal is made with full knowledge of the foregoing and in full agreement thereto.

By submission of this proposal, the Offeror acknowledges that the City of El Paso has the right to make any inquiry or investigation it deems appropriate to substantiate or supplement information contained in the proposal and related documents, and authorizes release to the City of El Paso of information sought in such inquiry or investigation.

ATTESTED BY: _____

By: _____

Name: _____

Title: _____

(Corporate seal, if applicable)

BUSINESS INFORMATION CERTIFICATION

Mark all that apply.

- | | |
|---|--|
| <input type="checkbox"/> Manufacturer or Producer | <input type="checkbox"/> Disadvantaged Business Enterprise |
| <input type="checkbox"/> Wholesaler | <input type="checkbox"/> Asian - Pacific American |
| <input type="checkbox"/> Retailer | <input type="checkbox"/> Black American |
| <input type="checkbox"/> Franchised Distributor | <input type="checkbox"/> Hispanic American |
| <input type="checkbox"/> Factory Representative | <input type="checkbox"/> Native American |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> Woman Owned Business |
| <input type="checkbox"/> Large Business | <input type="checkbox"/> Handicapped |
| <input type="checkbox"/> Small Business | <input type="checkbox"/> Local Business Enterprise |
| | <input type="checkbox"/> HUB State Certified Historically Underutilized Business
(please furnish copy of Certification) |

SMALL BUSINESS CONCERN: Less than \$1,000,000.00 in annual receipts or fewer than one hundred [100] full time employees.

DISADVANTAGED BUSINESS ENTERPRISE: At least fifty-one percent [51%] owned by one or more socially disadvantaged individuals, or a publicly held corporation with at least fifty-one percent [51%] of the stock owned by one or more such individuals.

WOMAN-OWNED BUSINESS: At least fifty-one percent [51%] owned by a woman, or women, who also control and operate the business. "Control" in this context means making policy decisions. "Operate" in this context means actively carrying on day to day management

HANDICAPPED: At least fifty-one percent [51%] owned by a person or persons with an orthopedic, otic [hearing], optic [visual], or mental impairment which substantially limits one or more of their major life activities.

LOCAL BUSINESS ENTERPRISE: A legal entity, a least fifty-one percent [51%] of which is owned by a resident, or residents of El Paso County, and which concern has been physically located within the legal boundaries of El Paso county for at least twelve [12] months.

HUB [HISTORICALLY UNDERUTILIZED BUSINESS]: A Business Enterprise, which has been granted a Certificate by the State of Texas, as a Historically Underutilized Business. The City of El Paso utilizes information on Historically Underutilized Businesses (HUB), from the State of Texas Comptroller of Public Accounts (CPA), HUB Program, 1711 San Jacinto Ave, P.O. Box 13186, Austin, Texas 78711. The City encourages you to contact the State if you feel you may qualify.

I certify that the foregoing information is a full, true and correct statement of the facts.

Signature of Person Authorized to Sign Application

Title

Date



**City Of El Paso
Financial Services Department – Purchasing Division**

NON-COLLUSION AND BUSINESS DISCLOSURE AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT – RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned official, on this day, personally appeared _____, a person known to me to be the person whose signature appears below; whom after being duly sworn upon his/her oath deposed and said:

1. I am over the age of 18, have never been convicted of a crime and am competent to make this affidavit.
2. I am a duly authorized representative of the following company or firm (the “Offeror”) which is submitting a response to 2013-135R ENVIRONMENTAL LABORATORY SERVICES FOR AIR QUALITY –ENVIRONMENTAL SERVICES:

_____ (Name of Offeror).

3. **BY SUBMITTING THIS BID, I CERTIFY THAT OFFEROR AND ITS AGENTS, OFFICERS OR EMPLOYERS HAVE NOT DIRECTLY OR INDIRECTLY ENTERED INTO ANY AGREEMENTS, PARTICIPATED IN ANY COLLUSION, OR OTHERWISE TAKEN ANY ACTION IN RESTRAINT OF FREE COMPETITIVE BIDDING IN CONNECTION WITH THIS PROPOSAL OR WITH ANY CITY OFFICIAL.**

4. I have listed in **Paragraph 10** below all the names the Offeror uses and has used in the past and certify that I have disclosed all such names, including any assumed (DBA) names.

5. **Certificate of Organization.** In completing this Affidavit, I have attached a copy of the organization certificate issued by the Secretary of State of the state in which the company was organized (i.e. Certificate of Formation, Certificate of Good Standing, Statement of Operation or Registration and/or a copy of Assumed Name Certificate if the Offeror/Offeror used a trade name in the Solicitation documents is other than the name under which company was organized).

6. **Material Change in Organization or Operation.** *Except as described in **Paragraph 10** below*, I certify that Offeror is not currently engaged nor does it anticipate that it will engage in any negotiation or activity that will result in the merger, transfer of organization, management reorganization or departure of key personnel within the next twelve (12) months that may affect the Offeror’s ability to carry out the contract with the City of El Paso.

7. **Debarment/Suspension.** *Except as described in **Paragraph 10** below*, I certify that Offeror and its subcontractors, officers or agents are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any covered transactions by any federal, state or local department or agency. If such an event has occurred, state in **Paragraph 10** below, the reason for or the circumstances surrounding the debarment or suspension, including but, not limited to, the name of the governmental entity, the period of time for such debarment or suspension and provide the name and current phone number of a governmental contact person familiar with the debarment or suspension.

I understand the Offeror is obligated to immediately inform the City in the event that the Offeror is included in such a debarment/suspension list during the performance of this Contract with the City of El Paso.

8. **Default/Termination of Contracts.** *Except as described in **Paragraph 10** below*, I certify that, within the last 24 months, there are no Contract(s) between the Offeror and a governmental entity that have been terminated, with or without the Offeror’s default. If such a contract has been terminated within the last 24 months, state in **Paragraph 10** below the reason for or circumstances surrounding the termination.
9. **Taxpayer Identification.** In completing this Affidavit, I have also attached a copy of a completed Form W-9 that shows the Offeror’s taxpayer identification number (Employer Identification Number or Social Security Number). I understand that failure to provide this information may require the City to withhold 20% of payments due under the contract and pay that amount directly to the IRS.

10. Additional Information (state the number of paragraph above which corresponds to the information provided)

(Attach additional pages if needed)

Attached are the following:

Certificate of Organization (required by Paragraph 5)

Taxpayer Identification (required by Paragraph 9)

I understand that by providing false information on this Affidavit, I could be found guilty of a Class A misdemeanor or state jail felony under the Texas Penal Code, Section 37110. In addition, by providing false information on this Affidavit, the Offeror it could be considered not responsible on this and future solicitations, and such determination could result in the discontinuation of any/all business or contracts with the Offeror by the City of El Paso.

SUBSCRIBED AND SWORN to before me on this _____ day of _____, 20____.

Signature

Notary Public

Printed Name

Commission Expires

(Rev. Sept. 2009)



**City Of El Paso
Financial Services Department – Purchasing Division**

INDEBTEDNESS AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT – RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned authority, on this day personally appeared _____ [FULL NAME] (hereafter “**Affiant**”), a person known to me to be the person whose signature appears below, whom after being duly sworn upon his/her oath deposed stated as follows:

1. Affiant is authorized and competent to give this affidavit and has personal knowledge of the facts and matters herein stated.
2. Affiant is an authorized representative of the following company or firm: _____
[Contracting Entity’s Corporate or Legal Name] (hereafter, “**Contracting Entity**”).
3. Affiant is submitting this affidavit in response to the following bid: *Solicitation No. 2013-135R ENVIRONMENTAL LABORATORY SERVICES FOR AIR QUALITY – ENVIRONMENTAL SERVICES*, which is expected to be in an amount that exceeds \$50,000.00.
4. Contracting Entity is organized as a business entity as noted below (check box as applicable):

For Profit Entity (select below):

- ☐ Sole Proprietorship
- ☐ Corporation
- ☐ Partnership
- ☐ Limited Partnership
- ☐ Joint Venture
- ☐ Limited Liability Company
- ☐ Other (Specify type in space provided below):

For Non-Profit Entity or Other (select below):

- ☐ Non-Profit Corporation
- ☐ Unincorporated Association

5. The information shown below is true and correct for the Contracting Entity. If Contracting Entity is a sole proprietorship or partnership, list all owners of 5% or more of the Contracting Entity. Where the Contracting Entity is an unincorporated association, the required information has been shown for each officer. [Note: In all cases, use FULL name, business and residence addresses and telephone numbers.]

Contracting Entity:

Name	
Business Address [No./Street]	
City/State/Zip Code	
Telephone Number	
Resident Address (if applicable)	
City/State/Zip Code	
Telephone Number	
Federal Tax ID Number	
Texas Sales Tax Number	

5% Owner(s) or Officers of Unincorporated Association ** (If none, state "None"):

Name	
Business Address [No./Street]	
City/State/Zip Code	
Telephone Number	
Resident Address (if applicable)	
City/State/Zip Code	
Telephone Number	

**Attach additional pages if necessary to supply the required names and addresses.

6. Affiant understands that in accordance with Ordinance No. 016529 of the City of El Paso (the "**City**"), the City may refuse to award a contract to or enter into a transaction with Contracting Entity that is an apparent low Offeror or successful Offeror that is indebted to the City.
7. Affiant understands that the term "**Debt**" shall mean any sum of money, which is owed to the City by a Contracting Entity, Owner, or Vendor, that exceeds one hundred dollars (\$100.00) and that has become Delinquent, as defined hereinafter. Such Debt shall include but not be limited to: (i) property taxes; (ii) hotel/motel occupancy taxes; and (iii) license and permit fees.
8. Affiant understands that the term "**Delinquent**" shall mean any unpaid Debt that is past due for sixty (60) days or more and, which is not currently subject to challenge, protest, or appeal.
9. Affiant represents that to the best of its knowledge, the Contracting Entity is not indebted to the City in any amounts as described in Item No. 7 above, as of the date of the submittal. If the Contracting Entity is indebted to the City, the following represents the type and estimated amount of indebtedness:

10. If the Contracting Entity is indebted to the City, describe any payment arrangements that have been entered into to settle the Debt.

11. In the event that the City refuses to do business with a Contracting Entity due to any indebtedness listed above or as determined by the City Financial Services Department, the Contracting Agency may appeal this determination in accordance with the appeal regulations in Ordinance 016529.

Affiant certifies that he is duly authorized to submit the above information on behalf of the Contracting Entity, that Affiant is associated with the Contracting Entity in the capacity noted above and has personal knowledge of the accuracy of the information provided herein; and that the information provided herein is true and correct to the best of Affiant's knowledge and belief. Affiant understands that providing false information on this form shall be grounds for debarment and discontinuation of any/all business with the City of El Paso.

SUBSCRIBED AND SWORN to before me on this _____ day of _____, 20____.

Signature

Notary Public

Printed Name

Commission Expires

**CITY OF EL PASO PURCHASING DEPARTMENT
VENDOR INFORMATION FORM**

This form must be accompanied by an IRS Form W-9 and Conflict of Interest Questionnaire.

___ Add ___ Update ___ Inactivate ___ Vendor ___ Contractual Employee ___ City of El Paso Employee

Send To: Suky Flores, Sr. Office Asst – Purchasing Telephone #: 915-541-4179 Fax #: 915-541-4347

From: Name: _____ City Department: _____ Tel. # _____

VENDOR SALES ADDRESS: If same as W-9 check box ☐

Company Name: _____

Street _____

City: _____ State _____ Zip Code _____

Contact Name & Title: _____

Telephone # () _____ Fax # () _____

E-Mail Address: _____ Web Page: _____

VENDOR STATUS:

- (Yes ___) (No ___) Small business concern (Less than \$1,000,000.00 Annual Receipts or 100 employees.)
- (Yes ___) (No ___) Disadvantage business concern (At least 51% owned by one or more socially disadvantaged individuals; or, a publicly-owned business at least 51% of the stock owned by one or more of such individuals.) If your company is certified please send us a photo copy. We must have an updated copy of the certificate on file. DBES include (Please mark one):
- (___) Black Americans (___) Hispanic Americans
- (___) Native Americans (___) Asian-Pacific Americans
- (Yes ___) (No ___) Woman-owned business (At least 51% owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.)
- (Yes ___) (No ___) Handicapped (At least 51% owned by a person or persons with an orthopedic, hearing, mental or visual impairment which substantially limits one or more of his/hers/their major life activities.)
- (Yes ___) (No ___) Local business enterprise (At least 51% of which is owned by a resident or residents of El Paso County and the principal place of business is in El Paso County.)
- (Yes ___) (No ___) Hub (Historically underutilized business) If your company is certified please send us a photo copy. We need to have an updated copy of the certificate on file.

CITY OF EL PASO EMPLOYEES (IRS-Withholding not required for the following items)

___ Pension ___ Refund ___ Mileage ___ Reimbursement ___ Settlement ___ Travel Request ___ Tuition Reimbursement

CONTRACTUAL EMPLOYEES OR VENDORS

- Based on W-9, Individual/Sole Proprietor or Partnership are marked as withholding. Corporation is not marked as withholding.
- Vendors for Rent, Medical Services, Attorney Fees are **always** marked as withholding, even if they are a Corporation

IRS-Withholding required information – Mark one of the following which applies to the type of payment that will be made to the vendor: (Incomplete forms will be returned to requester),

___ Wages (Withholding / Default Class 7)	___ Juror (No Withholding / No Default Class)
___ Goods (No Withholding / No Default Class)	___ Services (Withholding / Default Class 7)
___ Settlement / Attorney Proceeds (Withholding / Default Class 14)	___ Rental Property (Withholding / Default Class 1)
___ Medical & Healthcare (Withholding / Default Class 6)	___ Stipend (No Withholding / No Default Class)
___ Garnishment Vendor (No Withholding / No Default Class)	___ Corporation (No Withholding / No Default Class)

01/12/10

**Request for Taxpayer
Identification Number and Certification**

**Give Form to the
requester. Do not
send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____	
	<input type="checkbox"/> Exempt payee	
	Address (number, street, and apt. or suite no.) City, state, and ZIP code	Requester's name and address (optional)
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number										
					-					

Employer identification number										
						-				

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

**Sign
Here**

Signature of
U.S. person ▶

Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ**

For vendor or other person doing business with local governmental entity

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person doing business with local governmental entity.

2

☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Describe each affiliation or business relationship with an employee or contractor of the local governmental entity who makes recommendations to a local government officer of the local governmental entity with respect to expenditure of money.

4 Describe each affiliation or business relationship with a person who is a local government officer and who appoints or employs a local government officer of the local governmental entity that is the subject of this questionnaire.

Amended 01/13/2006

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor or other person doing business with local governmental entity

FORM CIQ

Page 2

- 5** Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.)

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or business relationship. Attach additional pages to this Form CIQ as necessary.

- A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?

☐ Yes

☐ No

- B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity?

☐ Yes

☐ No

- C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes

☐ No

- D. Describe each affiliation or business relationship.

- 6** Describe any other affiliation or business relationship that might cause a conflict of interest.

7

Signature of person doing business with the governmental entity

Date

Amended 01/13/2006



PART 7 - ATTACHMENT A - CONTRACT CLAUSES

1. TYPE AND TERM OF CONTRACT

This is a Best Value Contract under which the City shall order all of its supplies and/or services described in Section A from the successful bidder, hereinafter referred to as the Contractor, for the duration of the contract.

In the event the City has not obtained another service contractor by the expiration date of the term contract, the City, at its discretion, may extend the contract on a month-to-month basis not to exceed six (6) months until such time as a new contract is awarded.

The term of this agreement shall be for THIRTY-SIX (36) MONTHS commencing on the date the Contractor receives a written NOTICE OF AWARD. Delivery of the NOTICE OF AWARD shall be by Certified Mail, and the date of receipt shall be established as the date of Delivery shown on the US Postal Service Domestic Return Receipt form or facsimile confirmation.

2. INVOICES & PAYMENTS

- A. The Contractor will submit invoices, in single copy, on each contract after each delivery. Invoices covering more than one purchase order will not be accepted.
- B. Invoices will be itemized, including serial number of unit; transportation charges, if any, will be listed separately.
- C. Invoices will reflect the Contract Number and the Purchase Order Number.
- D. Do not include Federal Tax, State Tax, or City Tax. The City will furnish a tax exemption certificate upon request.
- E. Discounts will be taken from the date of receipt of goods or date of invoice, whichever is later.
- F. A copy of the bill of lading and the freight waybill when applicable will be attached to the invoice.
- G. Payment will not be due until the above instruments are submitted after delivery and acceptance.
- H. Mail invoices to the City Department indicated in the Invoice Instructions set forth on the Purchase Order.
- I. Contractor shall advise the Comptroller of any changes in its remittance addresses.

3. CONTRACTUAL RELATIONSHIP

Nothing herein will be construed as creating the relationship of employer and employee between the City and the Contractor or between the City and the Contractor's employees. The City will not be subject to any obligations or liabilities of the Contractor or his employees incurred in the performance of the contract unless otherwise herein authorized. The Contractor is an independent Contractor and nothing contained herein will constitute or designate the Contractor or any of his employees as employees of the City. Neither the Contractor nor his employees will be entitled to any of the benefits established for City employees, nor be covered by the City's Workers' Compensation Program.

4. INDEMNIFICATION [Rev. 04-15-99] [Rev. 01-04-04]

Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Contractor every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Contractor will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Contractor may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Contractor will pay all judgments finally establishing liability of the City in actions defended by Contractor pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Contractor's property from any cause.

5. GRATUITIES

The City may, by written notice to the Contractor, cancel this contract without liability to Contractor if it is determined by the City that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the City of El Paso with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

6. WARRANTY-PRICE

- A. The price to be paid by the City will be that contained in the

Contractor's bid which the Contractor warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event Contractor breaches this warranty the prices of the items will be reduced to the Contractor's current prices on orders by others, or in the alternative, the City may cancel this contract without liability to Contractor for breach or Contractor's actual expense.

B. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the City will have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

7. RIGHT TO ASSURANCE

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

8. TERMINATION [Rev. 06/07/97]

A. Termination for Convenience

The City of El Paso may terminate this contract, in whole or in part, at any time by written notice to the Contractor. The Contractor will be paid its costs, including the contract close out costs, and profit on work performed up to the time of termination. The Contractor will promptly submit its termination claim to the City of El Paso to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of El Paso, the Contractor will account for the same, and dispose of it in the manner the City of El Paso directs.

B. Termination for Default

If the Contractor fails to comply with any provision of the contract the City of El Paso may terminate this contract for default. Termination shall be effected by serving a notice of intent to terminate the contract setting forth the manner in which the Contractor is in default. The Contractor will be given an opportunity to correct the problem within a reasonable time before termination notice is rendered. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. The City shall have the right to immediately terminate the Contract for default if the Contractor violates any local, state, or federal laws, rule or regulations that relate to the performance of this Agreement.

9. ADDITIONAL REMEDIES [New 12/96]

If the City terminates the contract because the Contractor fails to deliver goods as required by the contract, the City shall have all of the remedies available to a buyer pursuant to the *UNIFORM COMMERCIAL CODE* including the right to purchase the goods from another vendor in substitution for those due from the Contractor. The cost to cover shall be the cost of substitute

goods determined by informal or formal procurement procedures as required by the Local Government Code. The City may recover the difference between the cost of cover and the contract cost by deducting the same from amounts owed to Contractor for goods delivered prior to termination or any other lawful means.

10. TERMINATION FOR DEFAULT BY CITY [Rev. 06/09/97]

If the City fails to perform any of its duties under this contract, Contractor may deliver a written notice to the Purchasing Manager describing the default, specifying the provisions of the contract under which the Contractor considers the City to be in default and setting forth a date of termination not sooner than 90 days following receipt of the Notice. The Contractor at its sole option may extend the proposed date of termination to a later date. If the City fails to cure such default prior to the proposed date of termination, Contractor may terminate its performance under this Contract as of such date.

11. FORCE MAJEURE [Rev. 06/07/97]

If, by reason of Force Majeure, either party hereto will be rendered unable wholly or in part to carry out its obligations under this Contract then such party will give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, will be suspended for only thirty (30) days during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party will try to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, will mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals. It is understood and agreed that the settlement of strikes and lockouts will be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure will be remedied with all reasonable dispatch will not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty. If a party is unable to comply with the provisions of this contract by reason of Force Majeure for a period beyond thirty days after the event or cause relied upon, then upon written notice after the thirty (30) days, the affected party shall be excused from further performance under this contract.

12. ASSIGNMENT-DELEGATION

No right or interest in this contract will be assigned or delegation of any obligation made by the Contractor without the written permission of the City. Any attempted assignment or delegation by the Contractor will be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

13. WAIVER

No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

14. INTERPRETATION-PAROL EVIDENCE

This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their contract. No course of prior dealings between the parties and no usage of the trade will be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this contract, the definition contained in the Code is to control.

15. APPLICABLE LAW

The law of the State of Texas will control this contract along with any applicable provisions of Federal law or the City Charter or any ordinance of the City of El Paso.

16. ADVERTISING

Contractor will not advertise or publish, without the City's prior consent, the fact that the City has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

17. AVAILABILITY OF FUNDS

The awarding of this contract is dependent upon the availability of funding. In the event that funds do not become available the contract may be terminated or the scope may be amended. A 30-day written notice will be given to the vendor and there will be no penalty nor removal charges incurred by the City.

18. VENUE

Both parties agree that venue for any litigation arising from this contract will lie in El Paso, El Paso County, Texas.

19. ADDITIONAL REMEDY FOR HEALTH OR SAFETY VIOLATION

If the Manager of Purchasing determines that Contractor's default constitutes an immediate threat to the health or safety of City employees or members of the public he may give written notice to Contractor of such determination giving Contractor a reasonable opportunity to cure the default which shall be a period of time not less than 24 hours. If the Contractor has not cured the violation within the time stated in the notice, the City shall have the right to terminate the contract immediately and obtain like services as necessary to preserve or protect the public health or safety from another vendor in substitution for those due from the Contractor at a cost determined by reasonable informal procurement procedures. The City may recover the difference between the cost of substitute services and the contract price from Contractor as damages. The City may deduct the damages from Contractor's account for services rendered prior to the Notice of Violation or for services rendered by Contractor pursuant to a different contract or pursue any other lawful means of recovery. The failure of the City to obtain substitute services and charge the Contractor under this clause is not a bar to any other remedy available for default.

20. COMPREHENSIVE GENERAL LIABILITY INSURANCE

For the duration of this contract and any extension hereof, Contractor shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence
\$1,000,000.00 – General Aggregate
\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

Notices and Certificates required by this clause shall be provided to:

City of El Paso
Financial Services Department/Purchasing Division
300 N. Campbell, 1st Floor
El Paso, Texas 79901-1153
Attn: VIRGINIA VENEGAS, PROCUREMENT ANALYST

Please refer to Bid Number/Contract Number and Title in all correspondence.

Failure to submit insurance certification may result in contract cancellation.

21. WORKERS' COMPENSATION

For the duration of this contract and any extension hereof, Contractor shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law: \$500,000.00. Out-of-state Contractors that provide goods through US mail, UPS, etc. are exempt from this requirement.

22. CONTRACT ADMINISTRATION

The point of contact for the administration of this Contract, on behalf of the City of El Paso, is:

VIRGINIA VENEGAS
PROCUREMENT ANALYST
Telephone: (915) 541-4654
Fax: (915) 541-4347
Email: venegasVA@elpasotexas.gov

Mail correspondence should be addressed to:

City of El Paso
Financial Services - Purchasing Division
300 N. Campbell, 1st Floor
El Paso, TX 79901-1153
Attn: VIRGINIA VENEGAS, PROCUREMENT ANALYST

Please refer to Bid Number/Contract Number and Title in all correspondence.

23. COMPLIANCE WITH NON-DISCRIMINATION LAWS

The Contractor agrees that it, its employees, officers, agents, and subcontractors, will comply with all applicable federal and state laws and regulations and local ordinances of the City of El Paso in the performance of this Contract, including, but not limited to, the American with Disabilities Act, the Occupational Safety and Health Act, or any environmental laws.

The Contractor further agrees that it, its employees, officers, agents, and subcontractors will not engage in any employment practices that have the effect of discriminating against employees or prospective employees because of sex, race, religion, age, disability, ethnic background or national origin, or political belief or affiliation of such person, or refuse, deny, or withhold from any person, for any reason directly or indirectly, relating to the race, gender, gender identity, sexual orientation, color, religion, ethnic background or national origin of such person, any of the accommodations, advantages, facilities, or services offered to the general public by place of public accommodation.

24. RIGHT TO AUDIT

The Contractor agrees that the City shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and copy any directly pertinent books, computer and digital files, documents, papers, and records of the Contractor involving transactions relating to this Contract. Contractor agrees that the City shall have access during normal working hours to all necessary Contractor facilities, and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. The City shall give Contractor reasonable advance notice of intended audits. The City will pay Contractor for reasonable costs of any copying the City performs on the Contractor's equipment or requests the Contractor to provide. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

The Contractor agrees that it will include this requirement into any subcontract entered into in connection with this Contract.

25. COOPERATIVE PURCHASING

When stated specifically in the solicitation, the City of El Paso may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more other public bodies or agencies of the State of Texas for the purpose of combining requirements to increase the efficiency or reduce administrative expenses. The Contractor must deal directly with each participating governmental entity named in the solicitation concerning the placement of orders, issuance of the purchase order, insurance certificates, contractual disputes, invoicing and payment or any other terms or conditions the participating agency may require. The actual utilization of this contract award by the participating governmental entity is at the sole discretion of that participating entity.

The City of El Paso is acting on behalf of the participating governmental agency for the sole purpose of complying with Texas competitive bidding requirements and shall not be held liable for any costs, damages, etc. incurred by the Contractor with regard to any purchase by the participating agency. The City of El Paso shall be legally responsible only for payment for goods and services in the quantities detailed in the City's own purchase order or contract.

PART 8 - FEDERAL CLAUSES & FORMS

FEDERAL FUNDING REQUIREMENTS

The following provisions shall apply throughout the performance of this Agreement because federal funds are involved.

Anti-Kickback Rules

Salaries of contractors, architects, draftsmen, technical engineers, and technicians performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C., Sec. 874; and Title 40 U.S.C., Sec. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

B. Disadvantaged Business Enterprise

The goal for Disadvantaged Business Enterprise (DBE) participation for this project is **ten percent (10%)**.

1. **Policy:** It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 23, and as amended in Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 apply to this Agreement.
2. **DBE Obligation:** The Contractor or its representative agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, the Contractor or its representative shall take all the necessary and reasonable steps in accordance with 49 CFR Part 23 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. The Contractor shall not discriminate on the basis of race, religion, color, national origin, age, disability, or sex in the award and performance of DOT-assisted contracts. Part 23 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 apply to this Agreement.

C. Title VI Compliance

During the performance of this Agreement, the Contractor, for itself, its assignees and successors in interest, hereinafter referred to as the "**Contractor**", agrees as follows:

1. **Compliance with Regulations:** The Contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "**Regulations**") which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the Agreement, and in accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, Section 303 of the Age Discrimination Act, as amended, 42 U.S.C. §6102 Section of the Americans with Disabilities Act, 42 U.S.C. §12132, and Federal Transit Law at 49 U.S.C. §5332, shall not discriminate on the grounds of race, religion, color, creed, sex, age, disability, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, or supplier, shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, disability, or national origin.
4. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Owner or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required, or the Contractor has knowledge of an employee who fails or refuses to furnish this information, the Contractor shall so certify to the Owner or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the Owner shall impose such agreement sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
 - a) Withholding of payments to the Contractor under the Agreement until the Contractor complies; and/or,
 - b) Cancellation, termination, or suspension of the Agreement, in whole or in part.

6. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs I through 6 of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Owner or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Owner to enter into such litigation to protect the interests of the Owner, and, in addition, the Contractor may request the services of the Attorney General in such litigation to protect the interest of the United States.

D. Interest of Members of, or Delegates to, Congress

In accordance with 18 U.S.C., Sec. 431, no member of, or delegates to, the Congress of the United States shall be admitted to a share of part of this Agreement or any benefit arising therefrom.

E. Lobbying

The Contractor certifies, to the best of his or her knowledge and belief, that:

1. **Federal Appropriated Funds:** No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. **Other Funds:** If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (b) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. **Required Language [Subawards]:** The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not

less than \$10,000 and not more than \$100,000 for each such failure.

F. Davis-Bacon Wages

In preparation of his cost estimates and the Project budget, described in Sec. VI, Part C., and Sec. VI, Part D., hereof, the Contractor shall base such estimates and the project budget on the premise that the regulations and requirements enumerated in 29 CFR Part 5, Subpart A (Davis-Bacon and Related Act) apply to the project and must be followed and obeyed by the selected contractor.

G. Conservation

The Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C., Sec.6321, *et seq.* The Energy Conservation requirements are applicable to all contracts.

H. Reporting, Record Retention and Access

1. **Access to Records:** The Contractor agrees to provide the Owner, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives, including any PMO Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
2. **Maintenance of Records:** The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Owner, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

I. Clean Water Requirements

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. and further agrees to report each violation of these requirements resulting from any Project implementation activity of the Contractor to the FTA and the appropriate EPA Regional Office.
3. The Contractor also agrees to include these requirements in all of its subcontracts.

J. Clean Air

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act,

as amended, 42 U.S.C. §§ 7401 et seq. and further agrees to report each violation of these requirements resulting from any Project implementation activity of the Contractor to the FTA and the appropriate EPA Regional Office.

4. The Contractor also agrees to include these requirements in subcontract.

K. Conflict of Interest

No employee, officer, or agent of the Owner shall participate in selection, or in the award or administration of an agreement if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer or agent.
2. Any member of his immediate family,
3. His or her partner, or
4. An organization which employs, or is about to employ, has a financial or other interest in the firm selected for award.

The Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the Contractor, potential contractors, or parties of subcontracts.

L. Debarred

The Contractor, including any of its officers or holders of a controlling interest, is obligated to inform the Owner whether or not it, or any of its subcontractors or agents, is or has been on any debarred bidders' list maintained by the United States government. Should the Contractor be included on such a list during the performance of this Project, it shall so inform the Owner. The Contractor hereby certifies that it and its subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from any of the covered transactions by any Federal Department or agency.

M. Termination of Grant

Should this Agreement be terminated as a result of cancellation of federal funding covering this Project, the Owner will promptly notify the Contractor of the cancellation by certified mail-return receipt requested, whereupon the Contractor shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Contractor will be paid for professional services performed to said date upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

N. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Owner and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

O. No Obligation by the Federal Government.

1. The Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by

the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Owner, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

P. Program Fraud and False or Fraudulent Statements or Related Acts.

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions

Q. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests from Owner which would cause Owner to be in violation of the FTA terms and conditions.

R. Protest Procedures

In the event that a bidder or Proposer desires to protest the procurement (bid or proposal) or an award, the following procedures must be followed:

1. General

Any protest must be submitted in writing. A fax is allowable as long as a formal written document with original signatures is also submitted. The outside of the transmittal envelope must be clearly marked "PROTEST". All protests shall clearly state the name of the protester, the solicitation, bid or contract title and number. The protest must be fully supported by technical data or other pertinent information that will delineate why the protest is being lodged. Protests filed after the deadline shall be dismissed.

The City of El Paso's objective is to resolve all formal protests as soon as practical. Nothing in this procedure should be construed as requiring a formal protest if a vendor wishes to clarify or discuss standards or procedures relating to the procurement process.

1.1 Submission for Protest of Procurement

Any protest of the procurement must be submitted in writing to the City Procurement Representative and received no later than five (5) working days before the scheduled closing date for receipt of proposals or bids. This includes protests based upon:

- Restrictive or exclusionary specifications,
- Challenges to the bid or proposal specifications,
- Evaluation procedures,
- Terms and conditions of the solicitation package.

1.2 Submission for Protest of Award

Any protest of the award must be submitted in writing to the City Procurement Representative received by no later than five (5) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the City of El Paso) after receipt of notice of the award.

1.3 Response

The City Procurement Representative shall respond to the protest within five (5) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the City of El Paso) from the receipt date of the written protest.

1.4 FTA Notification – Upon receipt of a protest, the City Procurement Representative shall notify FTA of the protest. All protest activities will be logged in the Procurement Narrative.

Options – The City Procurement Representative has the option to:

- Extend the time provided for each step of the protest procedure,
- Postpone the bid or proposal opening,
- Extend the date of notice of award, or
- Postpone the award of contract if deemed appropriate for protest resolution.

All active parties will be notified in writing if an option is elected.

2. Appeal of Determination

If the City Procurement Representative's response is not satisfactory, the protester may appeal in writing to the City Manager of El Paso within five (5) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the City of El Paso) from the date of receipt of the Procurement Representative's response. The City Manager will respond in writing within ten (10) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the City of El Paso) from the date of receipt of appeal.

The decision rendered by the City Manager shall be the final decision of the City of El Paso.

3. FTA Review of Protest

Federal Transit Administration's (FTA) protest procedures are found in FTA Circular 4220.1E. If federal funding is involved, FTA will review protests from a third party only when:

- The City failed to have or follow its protest procedures, or
- The City failed to review a complaint or protest.
- Violations of federal law or regulations and the standards of 49 CFR Part 18.36(b)(12).

The FTA regional office must receive an appeal within five (5) working days of the receipt of the decision of the City by the protester.

A protester must exhaust all administrative remedies with the City before pursuing a protest with FTA.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

S. Buy America Requirements

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

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PART 9 - ADDITIONAL FEDERAL FORMS
ADDITIONAL REPRESENTATIONS AND CERTIFICATIONS

INDEX:

- I. SCHEDULE OF DBE/WBE PARTICIPATION
- II. LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR
- III. BUY AMERICA CERTIFICATION REQUIREMENT FOR
PROCUREMENT OF STEEL, IRON OR MANUFACTURED PRODUCTS
- IV. CERTIFICATION STATEMENT
- V. CERTIFICATION OF LOWER-TIER PARTICIPANTS REGARDING
DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND
VOLUNTARY EXCLUSION
- VI. CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT,
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS
- VII. CERTIFICATION OF RESTRICTION ON LOBBYING

NOTE: FAILURE TO SIGN CERTIFICATIONS MAY BE CAUSE FOR

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SCHEDULE OF DBE/WBE PARTICIPATION

Name of Prime Contractor

Name of DBE/WBE Contractor	Address	Type of Work	Start/End Dates	Agreed Price
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____
7.	_____	_____	_____	_____
8.	_____	_____	_____	_____

NOTE

The undersigned will enter into a formal agreement with Disadvantaged Contractors for work listed in this schedule conditioned upon the execution of a contract with the City of El Paso.

Signature
Name of Prime Contractor

Date

****IF NOT APPLICABLE, PLEASE INDICATE N/A AND SIGN FORM.**

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LETTER OF INTENT TO PERFORM
AS A SUBCONTRACTOR

To: _____
Name of Contractor

The undersigned intends to perform work in connection with the above project as (check one):

_____ an individual _____ a corporation
_____ a partnership _____ a joint venture

The disadvantaged status of the undersigned is confirmed (a) in the City of El Paso's DBE/WBE Directory dated _____
or (b) on the attached Disadvantaged/Women Business Enterprise Certification Form (Available at Purchasing Department).

The undersigned is prepared to perform the following described work in connection with the above project, _____

at the following price: \$_____.

_____ percent of the dollar value of the subcontract will be sublet and/or awarded to non-disadvantaged contractors and/or non-disadvantaged suppliers. The undersigned will enter into a formal agreement for the above work with you conditioned upon your execution of a contract with the City of El Paso.

Disadvantaged Contractor

Signature

Date

Applies only to contracts for the purchase of motor vehicles.

****IF NOT APPLICABLE, PLEASE INDICATE N/A AND SIGN FORM.**

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BUY AMERICA CERTIFICATE
PROCUREMENT OF STEEL, IRON OR MANUFACTURED PRODUCTS

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The Bidder/Vendor hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.5.

Date: _____

Signature: _____

Company Name: _____

Title: _____

or

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(1)

The Bidder/Vendor hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C>F>R> 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B) or 5323(j)(2)(D), and 49 CFR 661.7

Date: _____

Signature: _____

Company Name: _____

Title: _____

****IF NOT APPLICABLE, PLEASE INDICATE N/A AND SIGN FORM.**

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BIDDER'S/VENDOR'S CERTIFICATION STATEMENT

1. Certification with regard to the performance of previous Contracts or Subcontracts subject to the Equal Employment Opportunity Clause and the filing of required reports.

The bidder _____, and/or proposed Subcontractor

_____, hereby certifies that they have _____, have not _____ participated in a previous Contract or subcontract subject to the Equal Opportunity Clause, as required by Executive Orders 10925, 11114, or 11246, and that they have _____, have not _____, filed with the Joint Reporting Committee on Equal Employment Opportunity, all reports due under the applicable filing.

Company Name

by:

Signature

Title

Dated: _____

Note: The above certification is required by the Equal Employment Opportunity Regulation of the Secretary of Labor (41 CFR 60-1.7) (b)(1), and must be submitted by bidders/vendors and proposed subcontractors only in connection with Contracts and Subcontracts which are subject to the Equal Employment Opportunity Clause. Contracts and Subcontracts which are exempt from the Equal Opportunity Clause are set forth in 41 CFR 60-1.5 (generally only Contracts or Subcontracts of \$10,000 or under are exempt).

Currently, Standard Form 100 (EE0-1) is the only report required by the Executive Orders or their implementing regulations. Proposed Prime Contractors and Subcontractors who have participated in a previous Contract or Subcontract subject to Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7 (b) (1) prevents the award of Contracts and Subcontracts unless such Contractor submits a report covering the delinquent period or such other period specified by the Federal Department of Transportation or by the director, Office of Federal Contract Compliance, United States Department of Labor.

****IF NOT APPLICABLE, PLEASE INDICATE N/A AND SIGN FORM.**

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2. Certification of Non-collusion. The bidder/vendor being sworn deposes and says, _____, the Contractor, submitting this bid/sole source, and that its agents, officers or employers have not directly or indirectly entered into any agreements, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding (sole source) in connection with this proposal /sole source or with any City official.

Company Name

by: _____
Signature

Title

Dated: _____

3. Ineligible Contractor. The bidder/vendor hereby certifies that it is/is not (underscore one) included on the United States Comptroller General's consolidated list of persons or firms currently debarred for violations of various public contracts incorporating labor standard provisions.

Company Name

by: _____
Signature

Title

Dated: _____

****IF NOT APPLICABLE, PLEASE INDICATE N/A AND SIGN FORM.**

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CERTIFICATION OF LOWER-TIER PARTICIPANTS REGARDING DEBARMENT,
SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

The Lower Tier Participant (potential sub-grantee or sub-recipient under an FTA project, potential third party contractor, or potential subcontractor under a major third party contract), certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(If the Lower Tier Participant (potential sub-grantee or sub-recipient under an FTA project, potential third party contractor, or potential subcontractor under a major third party contract) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal).

THE LOWER-TIER PARTICIPANT (POTENTIAL SUB-GRANTEE OR SUB-RECIPIENT UNDER AN FTA PROJECT, POTENTIAL THIRD PARTY CONTRACTOR, OR POTENTIAL SUBCONTRACTOR UNDER A MAJOR THIRD PARTY CONTRACT) _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

The undersigned Chief Legal Counsel for the _____ hereby certifies that the _____ has authority under State and Local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Applicant's Attorney

Date

****IF NOT APPLICABLE, PLEASE INDICATE N/A AND SIGN FORM.**

FEDERAL CLAUSES & FORMS /
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CERTIFICATION OF PRIMARY PARTICIPANT
REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The Primary Participant (applicant for an FTA grant of cooperative agreement, or potential contractor for a major third party contract), _____ certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transaction (Federal, State or local) terminated for cause or default.

(If the Primary Participant (applicant for an FTA grant, or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE PRIMARY PARTICIPANT (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD PARTY CONTRACT), _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

The undersigned Chief Legal Counsel for the _____ hereby certifies that the _____ has authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Applicant's Attorney

Date

FEDERAL CLAUSES & FORMS /
FEDERAL FUNDING REQUIREMENTS

CERTIFICATION OF
RESTRICTIONS ON LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into the cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of the fact upon which reliance is place when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 20_____.

Company Name: _____

By: _____
Signature of company official

Title of company official

****IF NOT APPLICABLE, PLEASE INDICATE N/A AND SIGN FORM.**